STATE OF MICHIGAN

COURT OF APPEALS

JOHN SHERIDAN, Petitioner-Appellant,	UNPUBLISHED March 20, 2014
v	No. 312675 Tax Tribunal
CITY OF WESTLAND, Respondent-Appellee.	LC No. 00-412632

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Petitioner, proceeding in propria persona, appeals as of right from a judgment of the Michigan Tax Tribunal that adopted the proposed opinion and judgment of a hearing referee with respect to the true cash value (TCV), assessed value (AV), and taxable value (TV) of petitioner's real property. We affirm.

The property at issue is a single family, one-story, four-bedroom home with 1,639 square feet and an attached garage in the Norwayne subdivision of the city of Westland. A previous house at that location was damaged by fire. The new house was built in 2006. For the 2010 tax year, the property was assessed as having a TCV of $114,500 and a TV of $57,250. Petitioner protested to the board of review, contending that the 2010 TCV was $32,000 and the TV was $16,000. The board of review upheld respondent's assessments. Petitioner then filed this appeal with the small claims division of the Tax Tribunal. In support of his proposed value, petitioner submitted listings from the Realcomp system concerning numerous properties that had been sold in the area. Most of the other homes were built in the 1940s and 1950s. Petitioner specifically identified five properties that he claimed supported his proposed TCV of his property. Petitioner asserted that the average price per square foot of the comparable properties was $19 and multiplied that number by the square footage of his house (1,639) to arrive at his proposed value of $32,000.

Respondent filed an answer on September 13, 2011. Although petitioner had appealed the assessment for the 2010 tax year, respondent referred to values for the 2011 tax year in its form answer. Respondent indicated that the state equalized value (SEV) and the TV on the assessment roll for 2011 were both $49,880, which respondent asserted were correct, and that the TCV was therefore $99,760. Respondent attached to its answer petitioner's petition to the board of review and the property record card for the property.

The hearing referee concluded that petitioner failed to meet his burden of proof in establishing the property's TCV. The referee's proposed judgment stated that the cost-less-depreciation valuation approach, as used on the property record card, was the most reliable indicator of the property's value and, accordingly, agreed with respondent's assessed value of the property. After petitioner filed exceptions to the referee's decision, the Tax Tribunal issued a final opinion that adopted the referee's proposed judgment. The tribunal also denied petitioner's motion for reconsideration.

A summary of the standard of review for decisions of the Michigan Tax Tribunal is set forth in *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527-528; 817 NW2d 548 (2012), as follows:

> Review of decisions by the Tax Tribunal is limited. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art 6, § 28. The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. *Id*.; *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991). If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. *Meadowlanes*, 437 Mich at 482-483.

Questions of statutory interpretation are reviewed de novo. *Mich Props, LLC*, 491 Mich at 528. Interpretation of administrative rules is a question of law that is also reviewed de novo. *Aaronson v Lindsay & Hauer Int'l, Ltd*, 235 Mich App 259, 270; 597 NW2d 227 (1999); *City of Romulus v Dep't of Environmental Quality*, 260 Mich App 54, 64; 678 NW2d 444 (2003).

Petitioner first argues that respondent's answer referred to the 2011 tax year, instead of to the 2010 tax year, and that the failure to file an answer with regard to the 2010 tax year should be deemed an admission of petitioner's allegations. Petitioner's requested treatment of respondent's answer is not supported by the rules applicable to proceedings in the small claims division of the Tax Tribunal. Former TTR 330 (1996 AACS, R 205.1330)[1] provided that upon receipt of the completed petition form by the petitioner, the clerk of the tribunal shall forward a copy of the form to the respondent. Former TTR 332 (1996 AACS, R 205.1332) addressed answers. It stated:

> (1) An answer to a petition shall be filed with the tribunal within 28 days after receipt by the respondent of the petition form completed by the petitioner as required by R 205.1330. The answer shall be on a form provided by the tribunal or shall be in the form of a written response that is in substantial compliance with

[1] The rules governing practice and procedure in the Tax Tribunal were rescinded and new rules were filed with the Secretary of State on March 20, 2013.

> that tribunal form. The answer shall set forth the facts upon which the respondent relies in defense of the matter.
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> (3) The respondent shall serve the petitioner with a copy of the answer and supporting documentation filed with the tribunal.

These rules were specific to the small claims division.

Petitioner relies on former TTR 245 (1996 AACS, R 205.1245), which applied to matters in the tax tribunal generally. That rule provided in part:

> (1) The respondent shall have 28 days from the date of service of the petition within which to file an answer or other responsive pleading. Failure to file an answer within 28 days may result in the scheduling of a default hearing as provided in R 205.1247.

Petitioner also cites MCR 2.111(E)(1), which states that "[a]llegations in a pleading that requires a responsive pleading . . . are admitted if not denied in the responsive pleading."

Former TTR 111(3) (1996 AACS, R 205.1111(3)) specified that TTR 301 to 350 "govern the practice and procedure in all cases before the small claims division. If an applicable small claims division rule does not exist, then the entire tribunal rules shall govern[.]" If an applicable entire tribunal rule does not exist, then the Michigan Court Rules apply. Former TTR 111(4).

Because an applicable small claims rule (former TTR 332) existed concerning answers, petitioner's reliance on former TTR 245 and MCR 2.111(E)(1) is misplaced. Additionally, because the small claims rule does not contain any provision allowing for a default or a deemed admission if an answer is not filed, petitioner has not shown that the tribunal made an error of law or adopted a wrong principle by failing to treat respondent's answer as an admission with respect to the 2010 tax year.

Petitioner next argues that respondent failed to provide a copy of the answer to petitioner and that sanctions should be awarded under MCR 2.114(E). Former TTR 332(3) (1996 AACS, R 205.1332(3)) required respondent to serve petitioner with a copy of the answer and supporting documentation. The rules governing the small claims division do not specify how service is to be made. However, former TTR 210(2) (AACS 1996, R 205.1210(2)) stated, "An answer, motion, or other document filed or served shall be deemed to be filed or served upon mailing or upon delivery in person, as provided by rule 2.107 of the Michigan Rules of Court, within the time fixed for filing or service." Former TTR 320(3) (2009 AACS, R 205.1320(3)) stated:

> A copy of a valuation disclosure or other written evidence to be offered in support of a party's contentions shall be filed with the tribunal and served upon the opposing party or parties not less than 21 days before the date of the scheduled hearing unless otherwise ordered by the tribunal. Failure to comply with this subrule *may* result in the exclusion of the valuation disclosure or other written evidence at the time of the hearing because the opposing party or parties

> may have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing. [Emphasis added.]

Petitioner asserts that he did not receive a copy of the answer, but that assertion does not mean that respondent did not serve it. Moreover, even if respondent did not serve the answer and attachments, that failure does not require that the evidence be excluded. Rather, the exclusion of evidence was discretionary. The Tax Tribunal's consideration of the answer and property record card does not afford petitioner any grounds for relief on appeal.

Petitioner next contends that the referee's proposed judgment inaccurately summarized the evidence petitioner submitted. He contends that the judgment is inaccurate because it ignores three of the five comparable properties that he discussed in his 11-page Attachment No. 1 that accompanied his petition. Petitioner frames this issue as involving "inaccurate findings of fact," and a decision that was not supported by competent, material, and substantial evidence. "The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record." *Mich Props, LLC*, 491 Mich at 527-528. "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 642; 806 NW2d 342 (2011).

The absence of any reference to and discussion of petitioner's five identified properties as comparables is not a matter of *inaccurate* findings, but rather one of completeness. This Court has explained in other contexts that "findings and conclusions need not include consideration of every piece of evidence entered and argument raised by the parties." *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 452; 705 NW2d 144 (2005). If findings of fact are inadequate for meaningful appellate review, then this Court may reverse and remand. See, e.g., *First City Corp v City of Lansing*, 153 Mich App 106; 395 NW2d 26 (1986); *Oldenburg v Dryden Twp*, 198 Mich App 696; 499 NW2d 416 (1993). In this case, even if the hearing referee overlooked petitioner's discussion of the five comparable properties, petitioner brought the matter to the tribunal's attention by filing exceptions and a motion for reconsideration. The tribunal was not persuaded that relief was warranted. Therefore, remanding to the tribunal to ensure consideration of petitioner's evidence and argument concerning the five comparables is unnecessary.

Petitioner further contends that use of the cost-less-depreciation valuation approach may violate the uniformity principle of property taxation. He cites *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 640; 462 NW2d 325 (1990), which states:

> The Michigan Constitution mandates not only that property must be assessed at a uniform fifty percent of true cash value, but also that the ad valorem taxation itself be uniform. Const 1963, art 9, § 3. It is well established that the concept of uniformity requires uniformity not only in the rate of taxation, but also in the mode of assessment. The controlling principle is one of equal treatment of similarly situated taxpayers. [Citations and internal quotation marks omitted.]

Thus, the Supreme Court explained that the uniformity requirement of Michigan's constitution required valuation of property on a true cash basis and rejected an approach that provided a

discount to a taxpayer owning several tax parcels. *Id*. at 640-641. The uniformity requirement addresses uniformity in assessment, not uniformity in the use of a valuation method to arrive at true cash value. Petitioner refers to his "doubt that there are many other properties in such subdivisions valued in that manner." Even assuming that lack of uniformity in assessment, when established, may provide a basis for relief, the mere *possibility* of lack of uniformity does not provide a basis for this Court to interfere with the tribunal's judgment under the limited review circumscribed by Const 1963, art 6, § 28.

Petitioner also challenges the tribunal's use of the cost-less-depreciation approach to determine TCV and contends that the tribunal failed to make its own determination of TCV when it adopted the values in accordance with the property record card. Petitioner contends that the tribunal erred in concluding that he did not sustain his burden of proof by submitting sales data for the Norwayne area, selecting five comparables, calculating the price per square foot, and multiplying that figure by the square footage of his property.

In general, real and tangible personal property is assessed at no more than 50 percent of its TCV. Const 1963, art 9, § 3; MCL 211.27a(1); *Kok v Cascade Twp*, 255 Mich App 535, 539-540; 660 NW2d 389 (2003). True cash value is synonymous with fair market value, i.e., the usual price for which the subject property would sell. *Meadowlanes*, 437 Mich at 484-485. In other words, true cash value refers to the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation. *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 696; 840 NW2d 168 (2013). The three methods typically used to determine TCV are the cost-less-depreciation approach, the sales-comparison or market approach, and the capitalization-of-income approach; variations of these methods may also be used. *Meadowlanes*, 437 Mich at 484-485. The petitioner bears the burden of proving the true cash value of the property. *Prof Plaza, LLC v City of Detroit*, 250 Mich App 473, 475-476; 647 NW2d 529 (2002). However, "even when a petitioner fails to prove by the greater weight of the evidence that the challenged assessment is wrong, the Tax Tribunal may not automatically accept the valuation on the tax rolls." *President Inn Props*, 291 Mich App at 631. Rather, the Tax Tribunal "has a duty to make an independent determination of true cash value." *Id*.

Petitioner presented information concerning sales of other properties in the area and calculated the sale price per square foot of a select group. The sales comparison method "requir[es] an analysis of recent sales of similar properties, a comparison of the sales with the subject property, and adjustments to the sales prices of the comparable properties to reflect differences between the properties." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 391; 576 NW2d 667 (1998).

The tribunal concluded that petitioner's averaging of price per square foot was an insufficient adjustment to make the properties useful for the sales-comparison approach because there was inadequate evidence that the sales were subject to normal market pressures and evidence concerning the conditions of the properties was lacking. We find no error in the tribunal's evaluation of petitioner's evidence. Under the circumstances, the tribunal appropriately determined that the cost-less-depreciation valuation method provided the most reliable indicator of TCV.

> Under the cost[-less-depreciation] approach, true cash value is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence. [*Meadowlanes*, 437 Mich at 484 n 18.]

As shown on the property record card, the calculation involved an approximation of the cost to reproduce the property with a deduction for both physical and economic depreciation, as well as application of an Economic Condition Factor (ECF).

We are mindful of the limited scope of review applicable to decisions of the Tax Tribunal. "The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle." *Mich Props, LLC*, 491 Mich at 527-528. This Court generally defers to the tribunal's selection of a valuation approach. For example, in *Detroit Lions, Inc*, 302 Mich App at 701, this Court stated:

> It is within the expertise of the MTT to determine which method provides the most accurate valuation under the particular circumstances of the case. *Meadowlanes*, 437 Mich at 485. In the case at bar, the tribunal determined that a modified cost-less-depreciation approach, based on the original build-to-suit cost, provided the most accurate value of the practice facility. This determination did not constitute an error of law, and it was supported by substantial evidence. Const 1963, art 6, § 28.

See also *Great Lakes Div*, 227 Mich App at 404 (stating that the tribunal's rejection of the cost-less-depreciation approach did not constitute an error of law or adoption of a wrong principle under the circumstances.) In this case, where the data was inadequate for a sales comparison analysis, the tribunal's selection of the cost-less-depreciation method was not an error of law or adoption of a wrong principle.

Petitioner contends that the Tax Tribunal failed to make its own independent determination of true cash value. As explained in *President Inn Props*, 291 Mich App at 631, "even when a petitioner fails to prove by the greater weight of the evidence that the challenged assessment is wrong, the Tax Tribunal may not automatically accept the valuation on the tax rolls." The assessed value on the tax rolls does not carry any presumption of validity. *Id*. at 640. Rather, the Tax Tribunal "has a duty to make an independent determination of true cash value." *Id*. at 631. The tribunal may adopt the assessed values as its independent determination of TCV "when competent and substantial evidence supports doing so." *Id*. at 640. Generally, the tribunal's decision will be supported by competent and substantial evidence where it is within the range of the evidence presented by the parties. *Id*. at 641-642.

In the present case, the tribunal stated that it reviewed the property record card and deemed it the most reliable indicator of TCV. The property record card provides evidence to support the tribunal's decision. Therefore, we reject petitioner's contention that the tribunal failed to make an independent determination of TCV.

Affirmed.

/s/ Amy Ronayne Krause
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck